



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 500  
DENVER, CO 80202-2466

February 24, 2000

Ref: 8EPR-EP

Larry E. Hamilton, State Director  
Bureau of Land Management, Montana Office

Dale N. Bosworth, Regional Forester  
U.S. Forest Service Region 1

OHV Plan Amendment  
Lewiston Field Office  
P.O. Box 1160  
Lewiston, MT 59457-1160

Re: Off-Highway Vehicle Environmental  
Impact Statement and Plan Amendment  
for Montana, North Dakota, and  
Portions of South Dakota

Dear Messrs. Hamilton and Bosworth:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the Region 8 Office of the United States Environmental Protection Agency (EPA) has reviewed the *Off-Highway Vehicle Environmental Impact Statement and Plan Amendment for Montana, North Dakota, and Portions of South Dakota*, dated October 1999. The United States Forest Service (FS) and Bureau of Land Management (BLM) propose to manage off-highway vehicle (OHV) recreation on over 16 million acres of public lands in Montana, North Dakota and portions of South Dakota. Given the rapid and unplanned growth of OHV use on public lands, we commend the BLM and the FS for initiating this project.

EPA supports the project purpose which emphasizes prevention of "further resource damage, user conflicts, and related problems, including new user-created roads..." (DEIS p.3), especially as it is consistent with Executive Orders 11644 and 11989 to ensure minimal resource degradation by OHV use (p. 115). A decision that meets this project purpose should also ensure that Resource Management Plan goals and Forest Plan goals will be met, including: managing vegetation, improving wildlife habitat diversity, maintaining water quality to standards, conserving soil resources, maintaining long-term land

productivity, and providing a safe, efficient and environmentally sound transportation system.

The BLM and FS have identified the Preferred Alternative (Alternative 2) as prohibiting cross-country travel by OHV recreationists, with several specific user-group exceptions. This action will limit OHV use to existing roads and trails, including unclassified "user-created" or "casual-use" routes as well as designated system routes, until such time as site-specific analysis designates appropriate use areas and trails. EPA generally supports Alternative 2 because the growing levels of cross country OHV recreation are environmentally unsustainable, having the propensity to degrade water, soil and habitat quality. For this reason, we agree that No Action will be insufficient to meet the stated purpose to "prevent further resource damage" and the Executive Orders within the study area. Due to the potential disregard for site-specific sensitivities, we also agree that Alternatives 3 and 4, with blanket seasonal or geographic restrictions, are not extensive enough to confer the desired level of protection as stated in the Purpose and Need.

We offer several comments and suggestions to strengthen the link between the proposed solution and the purpose for this management plan. First, as stated in EPA's scoping comment letter, in order to prevent resource damage, limiting use to existing roads and trails must include only mapped and designated "system" roads and cannot include interim use user-created routes. User created trails, by definition, were not planned to be protective of environmental resources. This means that they could be impacting sensitive ecological areas including wetlands, endangered species habitat, fragile soils and riparian areas. Under all proposed alternatives, the impacts associated with user-created roads and trails will continue and will likely worsen over time making them incompatible with minimizing OHV impact. We understand that the Purpose statement has been qualified to incorporate only restrictions on cross-country travel as a means for regulating the current OHV-caused degradation. However, we feel that sufficient data has been presented in the DEIS to show that many existing routes also contribute to this impact.

In addition, EPA has concerns regarding enforcement and the exemptions listed in the Preferred Alternative. The lengthy time period prior to the start of site-specific analysis (2 years for high priority and 5 for moderate priority areas) will make protection, reclamation and enforcement more extensive than if the problems were addressed immediately. While we commend the commitment to develop a site-specific inventory, in many cases, the time-frame could be insufficient to prevent further resource damage and ensure the minimization of environmental impacts. Lastly, the many exemptions with continued cross-country travel may still negatively impact unidentified sensitive areas unless all exempted activities, including game retrieval, are subject to permitting. We support the proposed permitting system for these exemptions. Through the permit process, the FS and BLM would have the opportunity to deny permits in sensitive areas, to educate recreationists about site-specific issues, and to identify to the user appropriate local areas and routes. More detailed comments on these and other issues are enclosed.

Based on the procedures EPA uses to evaluate the potential effects of proposed actions and the adequacy of the information in the DEIS, the Alternatives identified by the DEIS for the Plan Amendment will be listed in the Federal Register in the category EC-2. This rating means that the

review has identified potential environmental impacts associated with the Preferred Alternative, such as further resource degradation by non-system roads and user exemptions, and the DEIS is lacking information related to monitoring, enforcement and non-system roads. This additional information is important to thoroughly assess environmental impacts that should be avoided to fully protect the environment. Enclosed is a summary of EPA's rating definitions.

We appreciate your interest in our comments and the effort that went into the preparation of this document. Should you have any questions or want to discuss these comments, please contact Amy Bergstedt of my staff at 303-312-6647.

Sincerely,

Original Signed by  
Bradley Crowder for  
Cynthia G. Cody

Cynthia G. Cody  
Chief NEPA Unit  
Ecosystems Protection Program

Enclosure

cc: Elaine Suriano, EPA Office of Federal Activities  
Steve Potts, EPA Montana Field Office  
Joe Meek, Montana DEQ  
Dave Glatt, North Dakota SDH  
Anita Yan, South Dakota DENR

## **EPA's Specific Comments on the Off-Highway Vehicle Environmental Impact Statement and Plan Amendment for Montana, North Dakota, and Portions of South Dakota**

### *System Trails and Roads*

The DEIS states that up to 10% of OHV use on public land occurs cross-country (DEIS p. 25), and that most use is concentrated on existing roads and trails (p. 22). This document well illustrates that cross-country OHV use is environmentally damaging. Since there is a lack of site-specific data linking this degradation only to cross-country travel, it can be surmised from the description of the impacted environment that, to an extent, OHV use in general has been harming ecological resources.

If only 1-10% of the OHV use is through cross-country travel, perhaps much of the significant damage and potential damage listed in the DEIS is instead caused by non-planned or analyzed non-system roads and trails rather than cross country travel exclusively. The document states that, common to all alternatives, there are no restrictions proposed in riparian, highly erosive, or critical habitat areas where user-created roads already exist (p. 73). Because these user-created routes generally follow corridors with more moderate, convenient terrain, OHVs share the corridors with unidentified cultural resources (p.50) and wildlife (p. 66). Also, the proposed action to limit cross-country use will only maintain the current rate of degradation (p. 76). Given the on-going upward trend in OHV use, the cumulative effects from delaying action on these un-planned and un-managed routes will be more severe than alluded to in the DEIS (p. 64). The preferred alternative is not concurrent with preventing further resource damage as damage is known to increase with increased vehicle use (p. 64).

The DEIS also reports that most cross-country use takes place during the hunting season (p. 25). If in fact most of the OHV-related environmental damage is occurring through cross-country use, and hunters are the group most likely to travel in this manner, it then follows that to meet the Purpose and Need, all cross-country travel by hunters should be managed as well. This could be accomplished by through issuing pre-excursion permits for game retrieval or by eliminating the exception for game retrieval.

The DEIS rejects the alternative of limiting OHV travel to FS development roads and trails and BLM designated routes (referred to as "system" routes) as requested in EPA's scoping comments. This alternative was eliminated from study based on the argument that "it does not meet the Purpose and Need of this proposal" (DEIS p.9). This argument is made on the premise that analysis needed to support this alternative would take years, and would not therefore meet the "timeliness" provisions of the Purpose and Need. The DEIS states that "adequate data is not available to assess the impacts of closing significant amounts of [system routes]." On the contrary, we believe the DEIS provides all the necessary resource data to justify closing non-system routes, pending site-specific analysis, but does not provide any quantitative or qualitative data to justify keeping these routes open. It is unclear why the FS and BLM would require quantitative analysis to justify closing non-system routes, an activity that would protect environmental resources, but do not feel they need quantifiable data to justify keeping non-system routes open, an action that would increase environmental damage according to the DEIS.

We understand the urgency of action, but we do not believe that limiting use on non-system routes would require more time or analysis.

We are concerned that this proposed plan not set a precedent that would allow these non-system routes to become part of the system without analysis and planning.

This OHV policy must not allow or promote “trail creep” in which a system or non-system trail, created by non-motorized users or smaller OHVs such as motorcycles, is over time, open to travel by larger OHVs such as 4-wheel ATVs. In order to prevent trail creep under a policy allowing OHVs on non-system routes, the *type* of trail use (non-motorized, motorcycle, ATV, etc.) must be limited to existing use, and the existing use must be readily identifiable to trail users. That would mean that non-system routes would have to be mapped and marked and designated as to level of use. Again, mapping and designating use on non-system trails could be precedent setting and more easily allow non-system routes to be added to the system. The majority of OHV users appear to be committed to the protection of natural resources, are interested in the sustainability of the environment on public lands, and would not intentionally cause harm.

To assist in analyzing and addressing these concerns, EPA again requests that an alternative be included in the Final Environmental Impact Statement (FEIS) that restricts OHV use to system roads and trails only for the interim period until site-specific analysis can be completed. EPA concludes that the inclusion of an alternative to limit travel to system routes would fully meet the project purpose and the purpose of the Executive Orders, both with respect to timeliness and to preventing further resource damage. A restricted use policy can allow land managers to guide OHV use toward areas that are less sensitive to disturbance and protect the interests of all who enjoy and benefit from our public lands.

### *Programmatic-Scale*

Due to the broad nature of this programmatic assessment, specific land characteristic details have been left out of this DEIS. If the alternatives in the FEIS are modified to protect against increased environmental and cultural degradation, this level of detail is acceptable. However, we suggest that additional guidelines be incorporated into this Plan for the impending site-specific analysis, especially related to the mapping of non-system routes, and to the potential for wildlife and noxious weed displacement onto adjacent private lands.

### *Monitoring*

Monitoring activities are proposed in the DEIS to occur on two sites, once a year, across a three-state area. We found no indication who will choose those two sites, how they will be chosen, or if merely two are relevant to illustrate potential damage in three states. We assume that additional monitoring will take place at the unit level as stated in the DEIS and in 43CFR Subpart 8342.3 and 36CFR 295.5, but it would be helpful to have a brief description of this schedule included in the FEIS. If a specific schedule is not germane to all units, then standards for monitoring specific to OHV management for the individual units should be set in the FEIS.

### *Enforcement*

We understand that limited resources make enforcement a difficult aspect of OHV regulation; however, enforcement is crucial to the success of the proposed management plan. It would appear that the only practical way to enforce the proposed policy is to catch users in the act of creating a new trail, an unlikely scenario given current patrol capabilities. Perhaps if the definitions, guidelines, and maps were more clear to users enforcement would not be so difficult, as it is understood that most OHV users desire to protect and sustain the land they ride upon.

We are concerned that the definition of a “user-created” trail is too vague to be interpreted by the public on the ground or even the officials attempting to enforce the definition. The policy must therefore clearly define when a trail is officially considered a trail. For example, if ten OHVs, prior to the issuance of this proposed limited travel OHV policy, have driven across a previously un-tracked wet meadow leaving clear tracks and vegetation disturbance, would a trail user be able to distinguish whether the route across the meadow is considered a non-system trail?

An additional, critical complication to enforcing the proposed policy is that neither the land management agencies nor the users have any way of determining whether a user-created trail existed prior to implementation of this plan. If non-system routes were mapped, this would not be an issue, but because they are not mapped, there is no way of managing this proposal to be protective of environmental and cultural resources. By limiting OHV use to system routes the public would have easy access to clear maps designating where travel was appropriate. Additionally, the State of Montana has adopted Federal travel restrictions into Montana State law (p. 120), and we encourage discussion between the OHV Interagency Workgroup and the respective SD and ND State Fish and Wildlife Offices on the potential benefits of taking similar action.

### *Analysis with Respect to Snowmobiles*

Because snowmobiles affect many of the same resources as other OHVs, snowmobile impacts ought to be thoroughly analyzed as cumulative impacts (40 CFR.1808.7) within this EIS. Also, because snowmobiles are classified as OHVs, the resource impact and management issues associated with snowmobiles are very similar to those of other OHVs, and snowmobile use has escalated in parallel with other OHVs, we encourage the USFS and BLM to follow this OHV project as soon as possible with a regional policy for snowmobile use in Montana, North Dakota and South Dakota.